TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 7

JAMES F. MORRIS, PETITIONER,

vs.

WILLIAM R. McCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 21, 1946.

CERTIORARI GRANTED APRIL 7, 1947.

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IN THE

United States District Court

Eastern District of Michigan

Southern Division

Civil Action—File No. 3302

L. METCALFE WALLING,
Administrator of the Wage and Hour Division,
United States Department of Labor,
Plaintiff,

v.

JAMES F. MORRIS,
Defendant.

DOCKET ENTRIES

1942

1. March 26—Complaint filed.
2. March 26—Summons issued.
   April 8—Summons returned and filed.
3. April 20—Appearance and answer filed.
4. July 24—Stipulation of facts filed.
5. October 7—Supplemental stipulation of facts filed.

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6. September 26—Conclusions of law filed and entered. O'Brien, J.
7. September 26—Judgment dismissing complaint filed and entered. O'Brien, J.

8. December 6—Notice of appeal of plaintiff filed.
9. December 6—Stipulation re comparison of record filed.
10. December 6—Designation of portions of record filed.

1946

11. January 9—Order extending time for filing record and docketing appeal filed and entered. O'Brien, J.

COMPLAINT

(Filed March 26, 1942)

I.

Plaintiff brings this action to enjoin defendant from violating the provisions of Sections 15(a)(1) and 15(a)(2) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C. Title 29, Sec. 301 *et seq.*), hereinafter called the Act.

II.

Jurisdiction of this action is conferred upon the court by Section 17 of the Act.

III.

Defendant resides at 20030 East River Road, Grosse Ile, Wayne County, Michigan, within the jurisdiction of this court, and is now, and at all times hereinafter mentioned was, the sole owner and operator of a place of business and truck terminal and garage located at 4151 West Jefferson Avenue in the City of Ecorse, Wayne County, Michigan, where he is engaged, under the name and style of J. F. Morris Cartage Co., in the transportation of steel and other metals by motor vehicle.

IV.

At all times hereinafter mentioned, defendant employed and is employing approximately 60 employees in and about his said place of business in Ecorse, Michigan, in the transportation of steel and other metals by motor vehicle and in processes and occupations necessary to such transportation. The steel and other metals transported by defendant's employees are produced by steel mills located in the State of Michigan, from raw materials, substantial quantities of which are purchased and transported in interstate commerce from and through States other than the State of Michigan to the said steel mills. Defendant's employees, in the course of their employment by defendant, transport by motor vehicle substantial quantities of the steel produced in said steel mills from the said mills to various automobile manufacturers and other customers located within the State of Michigan who purchase the said steel and other metals from the said steel mills. Substantially all of the said steel and other metals, after being transported by defendant's employees from the said steel mills to the said automobile manufacturers and other customers of the said mills, are further processed and fabricated into parts or ingredients of automobiles, machines and military equipment which are produced for interstate commerce and have been and are being sold, transported, shipped and delivered in interstate commerce from the said automobile plants, and other customers' places of business in the State of Michigan to, into and through States other than the State of Michigan. The employment of defendant's employees in transporting the steel and other metals in the manner aforesaid and in operations necessary thereto constitutes production of goods for interstate commerce within the meaning of Section 3(j) of the Act.

V.

During the period beginning October 24, 1938, the effective date of Section 7(a)(1) of the Act, and repeatedly thereafter through October 23, 1939, defendant employed many of his aforesaid employees, who were engaged in the

production of goods for interstate commerce, as aforesaid, for workweeks longer than forty-four (44) hours, and did fail and refuse to compensate the said employees for their employment in excess of forty-four (44) hours in such workweek at rates not less than one and one-half times the regular rates at which they were employed, and, in fact, did fail and refuse to compensate them for such excess hours at any rates greater than the regular rates at which they were employed; and, during the period beginning October 24, 1939, the effective date of Section 7(a)(2) of the Act, and repeatedly thereafter through October 23, 1940, defendant employed many of his aforesaid employees, who were engaged in the production of goods for interstate commerce, as aforesaid, for workweeks longer than forty-two (42) hours, and did fail and refuse to compensate the said employees for their employment in excess of forty-two (42) hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, and, in fact, did fail and refuse to compensate them for such excess hours at any rates greater than the regular rates at which they were employed; and, during the period beginning October 24, 1940, the effective date of Section 7(a)(3) of the Act, and repeatedly thereafter, defendant has employed many of his aforesaid employees, who were engaged in the production of goods for interstate commerce, as aforesaid, for workweeks longer than forty (40) hours, and has failed and refused to compensate the said employees for their employment in excess of forty (40) hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, and, in fact, has failed and refused to compensate them for such excess hours at any rates greater than the regular rates at which they were employed. By employing the said employees for workweeks in excess of the said hours during the said periods without compensating them for their employment in excess of the said hours in such workweeks at rates not less than one and one-half times the regular rates at which they were employed, defendant has violated and is violating the provisions of Sections 7 and 15(a)(2) of the Act.

VI.

During the period beginning on or about October 24, 1938, and repeatedly thereafter, defendant has transported, shipped and delivered, with knowledge that shipment, delivery, and sale thereof in interstate commerce from points within the State of Michigan, to, into and through other states was intended, goods produced by his said employees, in the production of which many of his employees were employed in violation of Section 7 of the Act as alleged in Paragraph V hereof. By transporting, shipping and delivering, with knowledge that shipment, delivery and sale thereof in interstate commerce, as aforesaid, was intended, the said goods so produced, defendant has violated and is violating the provisions of Section 15(a)(1) of the Act.

VII.

Defendant has, since the effective date thereof, repeatedly violated the aforesaid provisions of the Act. A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

WHEREFORE, cause having been shown, plaintiff demands judgment enjoining and restraining defendant, his agents, servants, employees, and attorneys, and all persons acting or claiming to act in his behalf and interest, from violating the provisions of Sections 15(a)(1) and 15(a)(2) of the Act, both permanently and during the pendency of this action, and such other and further relief as may be necessary and appropriate.

WARNER W. GARDNER,
Solicitor,

ROY C. FRANK,
Assistant Solicitor,

A. A. COHEN,
Regional Attorney,

CHARLES A. REYNARD,
Attorney,

United States Department of Labor,
Attorneys for Plaintiff.

Post Office Address:
c/o Wage and Hour Division
U. S. Department of Labor
4090 Main Post Office Building
Cleveland, Ohio
or
c/o Wage and Hour Division
U. S. Department of Labor
Washington, D. C.

APPEARANCE AND ANSWER

(Filed April 20, 1942)

Now comes JAMES F. MORRIS, Defendant herein, and enters his Appearance in this cause by his Attorneys, MATHESON, DIXON & BRADY, and in Answer to the Complaint heretofore filed herein says:

I.

DENIALS

1. Answering Paragraph I of said Complaint, the Defendant admits the existence of the Fair Labor Standards Act of 1938 therein cited, hereinafter referred to in this Answer as the Act, but for reasons hereinafter set forth in this Answer the Defendant denies that he is chargeable with any alleged violation of the provisions of the Sections of the Act cited in said paragraph and accordingly denies that the Plaintiff is entitled to injunctive relief to enjoin the Defendant from future violation of the provisions of said cited Sections.

2. Answering the allegation set forth in Paragraph II of said Complaint, the Defendant admits that the Section of the Act therein cited confers jurisdiction upon the court in actions of this nature but, for reasons hereinafter set forth, denies that the provisions of said Section confers

jurisdiction on the court to grant injunctive relief against the Defendant in this proceeding.

3. Answering the allegations set forth in Paragraph III of said Complaint, the Defendant admits the allegations therein contained.

4. Answering the allegations set forth in Paragraph IV, the Defendant admits that during the periods mentioned in said Paragraph he employed approximately sixty employees engaged in transportation movements by motor vehicle between points located wholly in the State of Michigan, including, but not by way of limitation, the transportation of steel and other metals between steel mills located in said State and automobile manufacturers and other customers located within said State. With respect to the allegations therein contained as to transportation, processing, manufacture, sale, purchase, or other disposition of said steel and other metals prior to or subsequent to the possession of the same by the Defendant as a carrier thereof, the Defendant neither admits nor denies the allegations therein contained, having insufficient information upon which to form a belief, and leaves the Plaintiff to his proof. The Defendant denies that such employment by the Defendant and that such transportation operations by Defendant's employees constitutes production of goods for Interstate Commerce within the meaning of Section 3(j) of the Act on the ground that such allegation constitutes an erroneous conclusion of law based upon a faulty interpretation of the provisions of said cited Section as applied to the circumstances under which Defendant's business is conducted.

5. Answering the allegations set forth in Paragraph V of said Complaint, the Defendant admits that between October 24, 1938 and October 23, 1939 Defendant employed many of his employees for work-weeks longer than 44 hours; that between October 24, 1939 and October 23, 1940, Defendant employed many of his employees for work-weeks longer than 42 hours; that since October 24, 1940, Defendant has employed many of his employees for work-weeks longer than 40 hours.

Defendant denies all the other allegations contained in Paragraph V of the Complaint. In support of such denial Defendant will show that at all times mentioned in Paragraph V of said Complaint:

(a) Defendant's employees were paid an amount equal to and generally in excess of the minimum straight time wages prescribed by Section 6 of the Act for all hours employed during any work-week within the maximum hour provisions of Section 7(a) of the Act; and in addition thereto, said employees were paid for all overtime an amount equal to, and generally in excess of, one and a half times the straight time minimum wages prescribed by Section 6 of the Act for all hours of employment in any work-week beyond the maximum hours set forth in Section 7(a) of the Act, and/or

(b) Defendant's employees were compensated for their employment in excess of the hours specified in Section 7(a) of the Act at a rate not less than one and a half times the regular rate at which they were employed, as established by contract between the Defendant and such employees, and/or

(c) Some one or more of Defendant's employees were employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesmen and therefore within the exemptions provided in Section 13(a)(1) of the Act, and/or

(d) Some one or more of Defendant's employees were, by reason of their transportation duties and activities, employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to provisions of Section 204 of the Motor Carrier Act, 1935, and therefore within the exemptions established by Section 13(b)(1) of the Act, and/or

(e) Some one or more of Defendant's employees were engaged in transportation activities which placed them in the category of employees of an employer subject to the provisions of Part I of the Interstate Commerce Act and

therefore within the exemptions established by Section 13(b)(2) of the Act.

6. Answering the allegations contained in Paragraph VI of said Complaint, the Defendant denies the allegations therein contained and further denies the applicability of such allegations to the Defendant. In support of such denial, the Defendant alleges the fact to be that at all times mentioned in said Complaint, the Defendant was engaged in the transportation of property as a common carrier and that all of the property transported by the Defendant was tendered to him for transportation in commerce in the regular course of his business and that none of such property was produced by the Defendant or by his employees and that Defendant therefore falls within the express language of the exception set forth in Section 15 (a)(1) of the Act.

7. Answering the allegations contained in Paragraph VII of said Complaint, the Defendant, for all of the reasons hereinbefore set forth, denies that he has repeatedly violated the aforesaid provisions of the Act. The Defendant further denies that the Plaintiff is entitled to injunctive relief enjoining and restraining the Defendant from any threatened future violation of the Act on the ground that the facts and circumstances surrounding the Defendant's past operations do not show past violations of the Act for the reasons hereinbefore set forth, and on the further ground that the Complaint herein contains no allegations nor facts in support thereof to show that the Plaintiff has any reason to fear any future violation by the Defendant of the provisions of the Act; and on the further ground that said Complaint contains no allegation or facts in support thereof to show that the issuance of an injunction is necessary in order to prevent irreparable injury, a showing required by the provisions of Section 20 of the Clayton Anti-Trust Act, (38 Stat. 738 (1914), 29 U. S. C. Sec. 52 (1934)) as incorporated by reference in Section 17 of the Fair Labor Standards Act and as made a condition precedent to the exercise of the jurisdiction of this court pursuant to Section 17 of the Fair Labor Standards Act.

II.

Affirmative Defenses

1. Further answering said Bill of Complaint, the Defendant alleges by way of affirmative defense that if it shall be determined in this proceeding that it was the intent of Congress to make the provisions of the Act applicable to the transportation activities of the Defendant as they have in fact been conducted, then and in that event the Act is unconstitutional by reason of such application, because

(a) The Act impairs the right of contract between the Defendant and his employees contrary to the provisions of the Due Process Clause of the Fifth Amendment to the Constitution of the United States, and/or

(b) The Act constitutes an attempt by Congress to exercise commerce powers beyond the scope of those delegated to Congress by the Constitution of the United States, particularly Article I, Section 8, Clause 3.

(c) The Act constitutes an attempt by Congress to exercise powers expressly reserved to the various States under the Tenth Amendment to the Constitution of the United States.

(d) The Act constitutes an attempt by Congress to delegate to the Administrator of the Wage and Hour Division, United States Department of Labor, power to enforce an Act which is in and of itself beyond the powers of Congress.

Wherefore, Defendant prays that an Order may be entered by this Honorable Court in his favor dismissing the within Complaint.

Matheson, Dixon & Brady,
By: (s) George S. Dixon,
Attorneys for Defendant.
2280 Penobscot Building,
Detroit, Michigan.

Dated: Detroit, Michigan,
April 20, 2942.

STIPULATION OF FACTS

(Filed July 24, 1942)

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that for the purpose of any hearing or determination of this cause the facts and exhibits hereinafter set forth shall be taken as true.

This stipulation is made subject to the right of either party to offer at any hearing hereof, which may be had or ordered, relevant and material evidence of other facts not inconsistent with those herein stipulated to be true.

I.

NATURE OF DEFENDANT'S BUSINESS

Defendant, James F. Morris, is now and for the past twelve years has been the sole owner and operator of the J. F. Morris Cartage Company, 4151 West Jefferson Avenue, Ecorse, Michigan, which is operated as a sole proprietorship. Defendant, operating under the name J. F. Morris Cartage Company, is engaged as a common carrier for hire in the local transportation of property by motor vehicle, his principal business consisting of the transportation of steel. These for hire transportation operations are conducted in and about the Metropolitan area of Detroit, Michigan, and at no time have the operations extended beyond the territorial limits of Wayne, Oakland and Macomb Counties, Michigan.

In the regular course of his business during the year 1941, defendant employed approximately 60 persons. Of this number approximately 40 were employed as truck drivers, 14 as mechanics, painters, washers and repairmen in the garage, 3 as dispatchers and 3 as general office workers.

During the same period the equipment operated by the defendant in the regular course of his business consisted of approximately 50 trucks or power units (sometimes referred to as "tractors") and 60 trailers of various types (including both two-wheel or semi-trailers and four-wheel trailers).

Defendant's operations are centralized at his main garage and yard at 4151 West Jefferson Avenue, Ecorse,

Michigan, which is used as a dispatching office, general maintenance and repair garage, and storage space for equipment when not in active use.

Although the defendant is engaged in a general cartage business and is prepared to render such service to the general shipping public, approximately ninety-seven (97) per cent of the total revenue derived by the defendant from such cartage services is received for cartage services performed by the defendant for the Great Lakes Steel Corporation or the Michigan Steel Corporation, both located in Ecorse, Michigan, and both being subsidiaries of the National Steel Corporation.

The defendant's cartage services fall principally into the following categories:

A. Approximately sixty (60) per cent of defendant's operations consists of the transportation of steel from the mills of the Great Lakes Steel Corporation and from the mills of the Michigan Steel Corporation at Ecorse, Michigan to plants of various automobile manufacturers and other industrial establishments in the Detroit Metropolitan Area.

B. Approximately thirty-five (35) per cent of the defendant's operations consists of the transportation of steel within the plant of the Great Lakes Steel Corporation from one mill or portion thereof to another, or within the plant of Michigan Steel Corporation from one mill or portion thereof to another, or between the mills of the Great Lakes Steel Corporation and the Michigan Steel Corporation. The steel transported from one mill or plant to another, is so transported for the purpose of further processing in the course of its manufacture prior to sale and shipment. An unsegregated portion of the steel so produced in the mills of the Great Lakes Steel Corporation and Michigan Steel Corporation is ultimately shipped directly or indirectly in interstate commerce. In these operations the defendant's trucks often operate within the plant and without leaving the plant for several days.

C. Approximately three (3) per cent of the defendant's operations consists of the transportation of freight between the plants of the Great Lakes Steel Corporation and the plants of the Michigan Steel Corporation on the one hand, and, on the other hand, interchange points, such as boat docks, railroad depots, freight terminals and truck terminals lying in the Detroit Metropolitan Area, wholly within the boundaries of the State of Michigan, involving the picking up of freight from or the delivery of freight to water carriers, railroad carriers and line haul motor carriers, which freight either has moved across the Michigan State lines or is about to move across the Michigan State lines in continuous transportation through connection between the defendant and such other interstate carriers. The defendant's compensation for his portion of the through transportation service is in some instances paid to him by the interstate carrier, the compensation representing a division of the through rates on the transportation movement, and other instances being compensated by the shipper.

D. Approximately one (1) per cent of the defendant's operations consists of the picking up of freight at various industrial establishments in the Detroit Metropolitan Area and the transportation of such freight to the plants of the Great Lakes Steel Corporation or the Michigan Steel Corporation.

E. Approximately one (1) per cent of the defendant's operations consists of the transportation of miscellaneous freight in general cartage service for hire and for shippers other than Great Lakes Steel Corporation or Michigan Steel Corporation. Cartage in this category is of the same physical character as that described in subparagraphs A, C, and D above, except that it is done on behalf of and for the account of shippers other than Great Lakes Steel Corporation and Michigan Steel Corporation.

Attached hereto and marked Exhibit "A" is a table of firms for whom the defendant performed cartage services

for hire during the year 1941, the relative percentage of total revenue represented by each account, and a description of the type of cartage performed. It is stipulated and agreed that Exhibit "A" shall be incorporated herein and made a part hereof.

II.

Interstate Commerce

As indicated in Paragraph I hereof, as well as in Exhibit "A", the principal consigning firms for whom defendant's employees transport steel are Great Lakes Steel Corporation and Michigan Steel Corporation. The steel so consigned during the year 1941 consisted principally of bumper stock, fender stock and other types of steel commonly used in the manufacture of automobiles and parts. The materials thus transported were consigned and delivered to various automobile and parts manufacturers and other industrial establishments in and about the City of Detroit, Michigan. Attached hereto and marked Exhibit "B" is a representative list of consignees to whom such goods were transported during the week ending February 8, 1941. It is stipulated and agreed that Exhibit "B" shall be incorporated herein, made a part hereof, and considered to be typical of the group of consignees to whom defendant's employees transported goods during the period between October 24, 1938, the effective date of the Act, to the date hereof.

During the period between October 24, 1938, the effective date of the Act, continuously to the date hereof, the greater part of the consignee firms listed in Exhibit "B" have been and are now engaged in the production of goods for interstate commerce, and the greater part of the fender stock, bumper stock and other steel products delivered to such consignees by defendant's employees has been and is now being used by such consignees in the production of automobiles, trucks, trailers, machinery and other goods, a substantial portion of which is sold and shipped in interstate commerce.

III.

Analysis of Operations

As indicated in Paragraph I hereof, defendant's drivers are engaged in five principal types of transportation (see Subparagraphs A, B, C, D, and E of Paragraph I).

Attached hereto and marked Exhibit "C" is a Record of Functional Activities, by Types of Trips, of Drivers of J. F. Morris Cartage Company for the year 1941. It is stipulated and agreed that Exhibit "C" shall be incorporated herein and made a part hereof. Exhibit "C" sets forth the name of each of defendant's employees who was employed as a truck driver for a period of eight or more weeks during the year 1941. Opposite the name of each driver is a series of columns for each workweek during the year 1941.

In the first of these columns, designated "Total Trips", there is recorded in black type the total number of trips of all types which that driver made during the week. In the second column, designated "Pickup Trips", there are recorded in red type all trips of the character described in Subparagraphs C or E of Paragraph I hereof which involved movements of goods to or from railroad freight houses or line haul motor carrier depots. In the third column designated "Boat Dock Trips", (which appears only during the navigation season) there are recorded in blue type all trips of the character described in Subparagraphs C or E of Paragraph I hereof, which involved movements of goods to or from the boat docks of the several steamship companies in the City of Detroit, Michigan.

An examination of the totals for all drivers for all weeks discloses that pickup trips and boat dock trips constitute but a small portion of defendant's total business. Of a total of 19,786 trips of all types, 464 or 2.34 per cent were pickup trips, 260 or 1.31 per cent were boat dock trips, with the remaining 19,062 or 96.35 per cent representing interplant movements, of the types described in Subparagraphs A, B and D of Paragraph I.

Two analyses of Exhibit "C" have been prepared which are attached hereto and marked Exhibits "C-1" and "C-2".

It is hereby stipulated and agreed that Exhibits "C-1" and "C-2" are incorporated herein and made a part hereof.

Exhibit "C-1" is a Recapitulation of Exhibit "C" showing Percentage of Employees, by Weeks, Exclusively Engaged in Interplant Transportation. An examination of Exhibit "C-1" discloses that in the average workweek throughout the entire year 1941, 75.6 per cent of the drivers were exclusively engaged in interplant trips of the types described in Subparagraphs A, B, and D of Paragraph I. The remaining 24.4 per cent of the drivers in the average workweek during the year 1941 made one or more pickup or boatdock trips (or both).

Exhibit "C-2" is a Recapitulation of Exhibit "C" showing Percentage of Weeks, By Employees, in Which the Latter Were Exclusively Engaged in Interplant Transportation (of the types described in Subparagraphs A, B and D of Paragraph I).

An examination of Exhibit "C-2" discloses that the "average employee" was exclusively engaged in interplant transportation during 75.6 per cent of the workweeks in 1941. Two employees (W. Armbruster and J. Wineinger) were exclusively engaged in interplant hauling during the full period of their employment in the year 1941.

With the exception of but two other employees (W. Chase and L. Ruby) all of defendant's drivers were exclusively engaged in interplant hauling during the greater part (50 per cent or more) of the workweeks in the year 1941.

IV.

Wages and Hours of Employment

Each of the three of defendant's office employees is employed on a weekly salary basis and is compensated at a rate in excess of that required to be paid by Section 6 of the Act. None of these three office employees has ever worked in excess of the maximum number of hours prescribed in Section 7 in any workweek thereby entitling him to any overtime compensation.

Each of the three dispatchers employed by the defendant is employed on an hourly rate basis of ninety-one cents

an hour and is paid only straight time at such hourly rate regardless of the number of hours worked each week. Each of these dispatchers has been employed for a number of hours in excess of the number provided by Section 7 of the Act during substantially all of the workweeks since October 24, 1938, the effective date of the Act, without receiving any compensation in excess of his regular hourly rate for such overtime employment. In an average week each dispatcher earns $43.28. In those workweeks in which a dispatcher is employed for a period of 32 hours or less, he is compensated for his services only at straight time at his regular hourly rate of pay which results in his receiving less than $30.00 per week. Each dispatcher, during the period that he is on duty, has full authority over all drivers with power to hire or discharge drivers and to make determinative representations concerning their employment.

Each of the mechanics and laborers, employed by defendant in and about his garage or yard, with the exception of Herbert E. Smith, employed as defendant's Superintendent of Maintenance, is employed on an hourly rate basis and is paid only straight time at such hourly rate regardless of the number of hours worked each week. Employee Herbert E. Smith is paid a straight weekly wage of $60.00 regardless of the number of hours worked and the said Smith has been employed for a number of hours in excess of the number provided in Section 7 of the Act during substantially all of the workweeks since October 24, 1938, the effective date of the Act, without receiving any compensation in excess of his regular weekly salary of $60.00 per week. Herbert Smith, in the normal course of his employment as Superintendent of Maintenance, has full authority over all mechanics and laborers with power to hire or discharge such employees and to make determinative representations concerning their employment. The said Smith, who works the same schedule of hours as the other mechanics and laborers, devotes approximately twenty-five (25) per cent of his time to the performance of routine physical tasks of the same general character as that of the employees working under his direction and

supervision. All other mechanics and laborers have been employed for a number of hours in excess of the number provided in Section 7 of the Act during substantially all of the workweeks since October 24, 1938, the effective date of the Act, without receiving any compensation in excess of their regular hourly rates for such overtime employment.

During the period between October 24, 1938 and August 1, 1940, each of defendant's drivers was employed on an hourly rate basis and was paid straight time at such hourly rate regardless of the number of hours worked each week. All of such drivers were employed for a number of hours in excess of the number provided in Section 7 of the Act during substantially all of the workweeks between October 24, 1938 and August 1, 1940 without receiving any compensation in excess of their regular hourly rates for such overtime employment.

During the period between August 1, 1940 and August 1, 1941, defendant's drivers were employed pursuant to the terms of a collective bargaining agreement. Said agreement provided for employment on an hourly rate basis with straight time compensation for the first 52 hours of employment with overtime compensation at one and one-half times such hourly rate for all hours in excess of 52 in each workweek. All of defendant's drivers were employed for a number of hours in excess of the number provided in Section 7 of the Act during substantially all of the workweeks in the said period without receiving overtime compensation in excess of their regular hourly rates unless and until they had been employed in excess of the 52-hour limit provided by said collective bargaining agreement.

During the period between August 1, 1941 and the date hereof, defendant's drivers have continued to be employed pursuant to the provisions of said collective bargaining agreement, although the terms thereof have, since the date mentioned, been revised so as to increase the said hourly rates and extend the workweek to 54 hours, after which overtime compensation has been paid. All of defendant's drivers have been employed for a number of hours in excess of the number provided in Section 7 of

the Act during substantially all of the workweeks in the said period without receiving overtime compensation in excess of their regular hourly rates unless and until they have been employed in excess of the 54-hour limit provided by said collective bargaining agreement.

The collective bargaining agreements referred to in the last two preceding paragraphs are union contracts which were in full force in the Detroit Metropolitan Area during the period indicated and covered all union drivers engaged in general cartage operations within the Detroit Metropolitan Area, whether employed by companies engaged exclusively in a general cartage business in competition with the defendant, or employed to perform cartage operations in competition with those operations conducted by the defendant by motor carriers engaged in line-haul freight transportation in interstate commerce under the provisions of the Motor Carrier Act, 1935, Part II, Interstate Commerce Act. During the entire period from October 24, 1938 to the date hereof defendant has paid his drivers on an hourly wage basis equal to the union scale met by all carriers engaged in general cartage operations in the Detroit Metropolitan Area.

APPROVED:

A. A. COHEN,
Regional Attorney,

CHARLES A. REYNARD,
Attorney,

United States Department of Labor,
Attorneys for Plaintiff.

MATHESON, DIXON & BRADY,
By GEORGE S. DIXON,
Attorneys for Defendant.

EXHIBIT "A"

TABLE OF CONSIGNING FIRMS FOR WHOM J. F. MORRIS CARTAGE COMPANY PERFORMED SERVICES DURING 1941, AND THE CHARGES MADE FOR SUCH SERVICES.*

*Source: Accounts Receivable Ledger of J. F. Morris Cartage Co.

ACCOUNT		CHARGES	PERCENTAGE OF TOTAL CHARGES
Great Lakes Steel Outgoing	(1)	$126,570.08	48.551
Great Lakes Transfers	(2)	20,107.38	7.713
Great Lakes Pickups	(3)	3,578.30	1.373
Great Lakes Intermill	(4)	69,171.84	26.533
Michigan Steel Outgoing	(1)	28,518.96	10.939
Michigan Steel Transfers	(2)	1,337.37	.513
Michigan Steel Pickups	(3)	355.81	.136
Michigan Steel Intermill	(4)	2,494.31	.957
Miscellaneous	(5)	8,561.31	3.285
Totals		$260,695.36	100.000

(1) These accounts consist principally of shipments of the type described in Subparagraph A of Paragraph I. Also included however are some charges for shipments of the type described in Subparagraph C of Paragraph I.

(2) These accounts represent transportation of the type described in Subparagraph B of Paragraph I.

(3) These accounts represent shipments of the type described in Subparagraphs C and D of Paragraph I.

(4) These accounts represent shipments of the type described in Subparagraph B of Paragraph I.

(5) In addition to the 8 specific accounts set forth in the above table, representing 96.715 per cent of the total business transacted in 1941, the J. F. Morris Cartage Company also performed services for ap-

proximately 45 additional firms, representing the remaining 3.285 per cent of the 1941 business. Such cartage consisted of the types described in Subparagraphs C, D, and E of Paragraph I.

EXHIBIT "B"

REPRESENTATIVE LIST OF CONSIGNEES TO WHOM J. F. MORRIS CARTAGE COMPANY DRIVERS TRANSPORT STEEL FROM THE MILLS OF THE GREAT LAKES STEEL CORP.

(This is only a partial list and the names entered herein were taken at random from the time cards for the week ending February 8, 1941.)

Thompson Products Co.
7881 Conant

H. B. Hamburger & Co.
4000 Beaufait

Todd Steel Corp.
15443 Second Blvd.

Detroit Moulding Div.
L. A. Young Spring & Wire Corp.
1601 Clay

National Sheet Steel Co.
13000 Lyndon

Peerless Steel Products Co.
4201 Cabot

Standard Tube Co.
14600 Woodward

Garland Mfg. Co.
10533 Gratiot

Rotary Electric Steel Co.
21400 Mound

Kelsey-Hayes Wheel Co. (Military Rd. plant)
3600 Military

DeSoto Division—Chrysler Corp.
6000 Wyoming

Motor Products Corp.
11801 Mack

E. G. Budd Mfg. Co.
12141 Charlevoix

Buhl Stamping Co.
2730 Scotten

Rycenga Mfg. Co.
245 Adair

Briggs Mfg. Co. (8 Mile Rd. plant)
6450 E. Eight Mile Road

Whitehead Stamping Co.
1661 W. LaFayette

Hudson Motor Car Co.
12601 E. Jefferson

Clayton & Lambert Mfg. Co
11111 French Road

Fruehauf Trailer Co.
10940 Harper

Stanton Steel Co.
24647 Sherwood, Centerline

Motors Metal Mfg. Co.
5936 Milford

Dodge Bros. Corp. (main plant)
7900 Jos. Campau, Hamtramck

Chevrolet (No. 3 plant) Motor Div.
General Motors Corp.
1840 Holbrook

Solvay Process Co.
W. Jefferson & Solvay

Chrysler Corp.
341 Massachusetts

Consumers Steel Products Corp.
6450 E. McNichols

Kelsey-Hayes Wheel Co. (McGraw Rd. Plant)
6100 McGraw

Transportation Engineers Inc.
1957 W. Lafayette

Peninsular Metal Products Corp.
6635 E. Forest

Stamping Plant of DeSoto Div.—Chrysler Corp.
6600 Wyoming

Ternstedt Mfg. Co.
6307 W. Fort

Stenger Bumper & Mfg. Co.
153 Sears, Highland Park

Voisine Steel Co.
2423 McKinstry

Briggs Mfg. Co. (Mack Avenue plant)
11631 Mack

Whitehead & Kales Co.
58 Haltiner, River Rouge

Packard Motor Car Co.
1580 E. Grand Blvd.

Richards Bros. Div.—Allied Products Corp.
1560 E. Milwaukee

General Spring & Bumper Div.
Houdaille-Hershey Corp.
2660 E. Grand Blvd.

Fisher Body Co. (Fleetwood Plant)
West Fort & West Second

Detroit Lubricator Co.
5900 Trumbull

Ford Motor Co. (Rouge Plant)
3674 Schaefer Rd.
Dearborn

Bowen Products Corp.
4647—4th, Ecorse

Electro Master Inc.
1801 E. Atwater

EXHIBIT "C-1"

RECAPITULATION OF EXHIBIT "C" SHOWING PERCENTAGE OF EMPLOYEES BY WEEKS, EXCLUSIVELY ENGAGED IN INTERPLANT TRANSPORTATION

Week Ending 1941		Total Drivers Employed	Drivers Making Pickup Trips**	Drivers Making Boat Dock Trips**	Drivers Making Pickup & Boat Dock Trips	Drivers Engaged Exclusively in Interplant Transportation*	
						Number	Percent
Jan.	4	39	8	—	—	31	79.5
	11	38	8	—	—	30	78.9
	18	37	4	—	—	33	89.1
	25	38	8	—	—	30	78.9
Feb.	1	38	4	—	—	34	89.5
	8	39	7	—	—	32	82.1
	15	38	6	—	—	32	84.2
	22	40	11	—	—	29	72.5
Mar.	1	41	6	—	—	35	85.4
	8	42	4	—	—	38	90.5
	15	42	5	—	—	37	88.1
	22	42	3	—	—	39	92.9
	29	41	5	—	—	36	87.8
Apr.	5	40	4	—	—	36	90.0
	12	42	1	—	—	41	97.6
	19	41	3	—	—	38	92.7
	26	40	5	—	—	35	87.5
May	3	39	4	—	—	35	89.7
	10	41	5	—	—	36	87.8
	17	36	4	—	—	32	88.9
	24	40	5	5	1	29	72.5
	31	39	4	8	1	26	66.7
June	7	40	3	—	—	37	92.5
	14	40	4	3	—	33	82.5
	21	41	7	1	—	33	80.5
	28	38	5	—	—	33	86.8

Week Ending 1941	Total Drivers Employed	Drivers Making Pickup Trips**	Drivers Making Boat Dock Trips**	Drivers Making Pickup & Boat Dock Trips	Drivers Engaged Exclusively in Interplant Transportation* Number	Percent
July 5	37	3	—	—	34	91.9
12	38	4	—	—	34	89.5
19	39	4	—	—	35	89.7
26	38	4	—	—	34	89.5
Aug. 2	37	5	—	—	32	86.5
9	35	10	3	—	22	62.9
16	35	2	10	—	23	65.7
23	36	1	4	—	31	86.1
30	33	8	4	2	19	57.6
Sept. 6	34	2	8	4	20	58.8
13	33	4	10	3	16	48.5
20	32	3	10	2	17	53.1
27	32	5	18	2	7	21.9
Oct. 4	32	9	8	1	14	43.8
11	32	3	10	7	12	37.5
18	32	3	5	2	22	68.8
25	24	5	2	1	16	66.7
Nov. 1	33	8	7	6	12	36.4
8	33	6	9	—	18	54.5
15	33	4	7	5	17	51.5
22	30	4	4	3	19	63.3
29	33	7	14	1	11	33.3
Dec. 6	33	10	—	—	23	69.7
13	32	11	—	—	21	65.6
20	34	11	—	—	23	67.6
27	31	5	—	—	26	63.9
Totals	1903	274	150	41	1438	75.6

* As used here "Interplant Transportation" refers to those types described in subparagraphs A, B and D of Paragraph I of the Stipulation.

** As used here "Pickup Trips" and "Boat Dock Trips" refer to transportation of the type described in Subparagraph C of Paragraph I of the stipulation.

EXHIBIT "C-2"

RECAPITULATION OF EXHIBIT "C" SHOWING PERCENTAGE OF WEEKS, BY EMPLOYEES, IN WHICH THE LATTER WERE EXCLUSIVELY ENGAGED IN INTERPLANT TRANSPORTATION

Driver's Name	Total Weeks Worked (1941)	Pickup Weeks**	Boat Dock Weeks**	Pickup and Boat Dock Weeks	Weeks Exclusively Engaged in Interplant Transportation*	
					Number	Percent
E. Allmon	51	5	7	—	39	76.5
F. Armbruster	45	20	—	2	23	51.1
W. Armbruster	25	—	—	—	25	100.0
L. Baker	52	4	8	2	28	73.1
R. Becker	52	10	5	1	36	69.2
L. Broughton	51	—	1	—	50	98.0
W. Chase	51	25	2	—	24	47.1
E. Curry	15	2	1	—	12	80.0
C. Decker	33	4	2	—	27	81.8
A. Earley	48	9	3	—	36	75.0
L. Earley	49	2	7	1	39	79.6
E. Fall	52	—	3	—	49	94.2
C. Fude	52	11	6	1	34	65.4
L. Gee	51	2	1	—	48	94.1
J. Gorman	51	8	4	3	36	70.6
B. Hanson	52	2	9	3	38	73.1
T. Jacks	52	14	2	1	35	67.3
F. Kittle	33	11	1	—	21	63.6
W. Klear	50	7	4	—	39	78.0
E. Knapp	38	6	1	1	30	78.9
D. Kramer	51	12	3	3	33	64.7
D. Labadie	36	7	2	—	27	75.0
E. Lafnear	11	1	—	—	10	90.9
A. McCurry	28	—	2	—	26	92.9
G. Nelton	51	8	1	—	42	82.4
J. Mesie	52	—	9	1	42	80.8
R. Morris	33	6	—	—	27	81.8
O. Navarre	50	7	6	5	32	64.0

Driver's Name	Total Weeks Worked (1941)	Pickup Weeks**	Boat Dock Weeks**	Pickup and Boat Dock Weeks	Weeks Exclusively Engaged in Interplant Transportation*	
					Number	Percent
F. Powers	50	—	2	—	48	96.0
M. Preston	52	1	4	—	47	90.4
M. Riopelle	48	5	4	1	38	79.2
L. Ruby	51	29	—	—	22	43.1
A. Schwartz	52	2	12	2	36	69.2
W. Schwartz	52	3	7	1	41	78.8
N. Scott	52	4	4	4	40	76.9
E. Seneski	51	5	3	3	40	78.4
J. Smiga	49	7	4	2	36	73.5
F. Strini	51	3	8	2	38	74.5
B. Trew	22	1	—	—	21	95.5
A. Vallie	51	11	6	—	34	66.7
E. Wilkins	45	12	6	2	25	55.6
J. Wineinger	28	—	—	—	28	100.0
B. Young	34	8	—	—	26	76.5
Totals	1903	274	150	41	1438	75.6

* As used here, "Interplant Transportation" refers to those types described in subparagraphs A, B and D of Paragraph I of the Stipulation.

** As used here, the terms "Pickup Weeks" and Boat Dock Weeks" refer to weeks in which the driver was engaged in transportation of the type described in Subparagraph C of Paragraph I of the Stipulation.

SUPPLEMENT TO STIPULATION OF FACTS UNION CONTRACTS EXHIBIT "D"

(Filed October 7, 1942)

It is hereby stipulated and agreed by and between the Parties hereto, by their respective attorneys, that the photostatic documents attached hereto and marked respectively Exhibit "D-1", "D-2", and "D-3" constitute the collective bargaining agreements referred to on pages 9 and 10 of the Stipulation of Facts heretofore filed in the above entitled cause and shall be considered in connection with said Stipulation of Facts as supplementary thereto and a part thereof.

Exhibit "D-1" is a four page agreement between J. F. Morris Cartage Company and Truck Drivers' Union Local No. 299, Detroit, Michigan, of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, effective August 1, 1940 to continue in full force and effect until July 1, 1942.

Exhibit "D-2" is a two page letter dated August 13, 1941 modifying said agreement signed by James R. Hoffa, indicating acceptance by the Union and signed by James F. Morris indicating acceptance by J. F. Morris Cartage Company.

Exhibit "D-3" is a two page letter dated August 26, 1941 further modifying said agreement and signed by same parties indicating acceptance by the Union and by said employer.

It is further stipulated and agreed by and between the Parties hereto, by their respective attorneys, that Exhibits "D-1", "D-2", and "D-3" attached hereto constitute the terms of the collective bargaining agreement pursuant to which all of defendant's drivers were employed during the period between August 1, 1940 and the date of the Stipulation of Facts heretofore filed in the above cause and that said collective bargaining agreement also covered all Union drivers engaged during the same period in general cartage operations within the Detroit Metropolitan area, whether employed by companies engaged

exclusively in a general cartage business in competition with the defendant, or employed to perform cartage operations in competition with those operations conducted by the defendant by motor carriers engaged in line-haul freight transportation in interstate commerce under the provisions of the Motor Carrier Act, 1935, Part II Interstate Commerce Act.

Dated: September 28th, 1942.

Approved:

(s) CHARLES A. REYNARD,
Regional Attorney,
United States Department of Labor,
Attorneys for Plaintiff.

(s) MATHESON, DIXON & BRADY,
By. (s) GEORGE S. DIXON,
Attorneys for Defendant.

EXHIBIT "D-1"

AGREEMENT

THIS AGREEMENT made and entered into by and between J. F. MORRIS CARTAGE Co., hereinafter referred to as Company, party of the first part, and Truck Drivers Union Local No. 299, Detroit, Michigan, of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereinafter referred to as "Union", party of the second part.

WITNESSETH:

WHEREAS, the company is engaged in local cartage and/or over-the-road hauls in intrastate and interstate transportation of freight by motor vehicle in, from and between Metropolitan Detroit, Michigan, and

WHEREAS, the Union is a voluntary labor organization composed of men employed in the trucking industry as highway drivers, city drivers, drivers' helpers, dock workers, checkers and freight handlers, some of whom are employed by the company, and

WHEREAS, the said Company and the said Union acting by their duly authorized representatives in conference, and after due consideration of the matters herein stated, hereby agree as follows:

ARTICLE I.

RECOGNITION

The Company agrees to employ only members in good standing in Local Union No. 299, it being understood and agreed that whether any employee is a member in good standing in said Union shall be determined exclusively and solely by the Union, provided, however, in the event the Union is unable to furnish qualified (acceptable to the company) men in good standing, the company may employ non-union men, provided however, such non-union men become members of Local Union No. 299 within thirty (30) days from commencement of employment.

ARTICLE II.

WAGE SCALE AND CONDITIONS

(a) Parties to this agreement agree that in no case shall any scale of wages be less than provided herein. Provided, however, that the signing of this agreement shall in no way affect the present wage scale if such scale is higher than provided in this agreement.

(b) The minimum wage scale for local deliveries shall be as follows:

1/2 ton pickups used in messenger service only	70c	per hour
Straight jobs and semis (Until January 1, 1941 and 80c per hour for the balance of the agreement.)	77½c	per hour
Double bottoms (Until January 1, 1941 and 85c per hour for the balance of the agreement.)	82½c	per hour
Dockmen	60c	per hour
Checkers	67½c	per hour

The regular week's work shall consist of fifty-two (52) accumulated hours. All hours worked in excess of fifty-two (52) hours in any one week shall be paid at the rate of time and one-half (1½) the regular hourly rate established in this agreement.

(c) There shall be a time clock installed in every company where 25 or more Local No. 299 members are employed. When the driver or member-employee is called and reports for work; time shall commence when said employee reports for duty, and in no case shall said employee receive less than three (3) hours' pay for reporting for duty.

(d) In the event the companies under the jurisdiction of Local No. 299 should contract work under the jurisdiction of other Local Unions and the rate of pay established by such Local Unions is higher than the rate of pay in this contract, the higher rate of pay shall prevail for such work actually performed.

(e) It is further agreed by and between the parties hereto that in the event the company leases equipment from individual owners, then and in that event the company shall pay the driver directly and separately from the lessor of said equipment. It is further agreed that should it become necessary for the company to hire extra equipment, only Union drivers shall be allowed to drive same.

(f) Seniority: In case of reduction in force the Union members longest in the service of the company shall be retained and the members youngest in the service shall be laid off. The seniority list must be posted where it will be accessible to the members of the Union at all times. The Union agrees, however, that the application of this paragraph to all local cartage companies shall be subject to individual treatment and consideration of the application of such seniority rule.

ARTICLE III.

General Provisions

1. The Union, as well as the employee members thereof,

agree at all times as fully as it can be in their power, to further the interests of the said industry and of the respective company.

2. Drivers shall not perform pickup or delivery service or handle freight beyond thirty (30) feet from tail gate of vehicle. This applies only to premises of consignee or consignor.

3. Members of the Union shall report, immediately, to the company in writing, all defects in equipment and all accidents and the names and addresses of all witnesses to accidents.

4. The company shall not require members of the Union to take out on the streets or highways any vehicle not equipped with the safety appliances required by law, or any vehicle not in a safe operating condition.

5. When the occasion arises where a driver gives written report on forms in use by the company of a vehicle being in an unsafe operating condition and receives no consideration from the company, then he shall take the matter up with the officers of the Union who shall take the matter up with the company.

6. No member of the Union shall be responsible for loss or damage done to the vehicle operated by him or to the merchandise under his charge, unless same resulted from the negligence of such member.

7. Any rule of the company requiring physical or mental examination shall be promptly complied with by the members of the Union, provided, however, that such medical fees are paid by the company.

8. It is understood and agreed that should it subsequently be determined that members of the local cartage association or the members of the Local Union come under the provisions of the Fair Labor Standard Act or any similar legislation enacted in the State of Michigan, then as to such members any provisions of this contract that do not comply with the requirements of said Act are to be changed so that there is no violation of the statutes, provided, however, that such changes shall not result in any

substantial penalties to members of the Union or the company.

9. Violations on the part of the employee member of the Union of the rules and regulations of the Union and/or the company, or his or its insurance company, or violation of the rules and regulations provided by the municipal, state, or federal law or authority, as related to motor transportation or to general conduct, or unnecessary delay in the transportation of freight, or any employee's dishonesty, carelessness, or incompetency, shall be considered cause for disciplinary action on the part of the company and shall subject the employee to temporary or permanent dismissal from employment.

10. It is mutually agreed that it is the intent of both parties hereto that each and every company engaged in transportation covered by this agreement shall be bound by the same and identical terms as provided herein and that should the Union at any time hereafter during the life of this agreement, allow any carrier a lower wage scale or any other concession lower than the standards established by this agreement, then such lower scale or other concessions shall automatically be adopted and become a part of this agreement so that all carriers can obtain the benefits automatically without amending or endorsing any part of this agreement affecting such changed wage scale or other concessions.

ARTICLE IV.

Steward and Dues.

1. The company shall recognize the right of the employees to appoint or elect a steward at each terminal, the duties of such steward in no way conflicting with his regular duties.

2. The company further agrees to honor all written or signed orders of employees for payment of application fees or union dues, presented by the Union members, and deduct the amount stated thereon from the wages of such member of the Union and pay the same over to the Union.

ARTICLE V.

Adjustment of Grievances

It is mutually agreed that should any differences arise between the company and the Union or its members, including disagreements as to the meaning and application of the provisions of this agreement, there shall be no strikes, tie-up of equipment, walk-outs or any cessation of work on the part of the Union and its members, nor shall the company use any method of a lock-out until the parties hereto first attempt to settle their differences or grievances in the following manner:

(a) All grievances of employee members must be reported in writing to officers or persons designated by the Union if such grievances are not satisfactorily adjusted by the company. The Union representatives shall present the written complaint to the company and every effort shall be made to settle same.

(b) Arbitration of any major grievance which cannot be settled by the Union and the company must be submitted in writing to a joint meeting of representatives of Local Union No. 299 and the Employers' Joint Labor Relations Committee, which latter committee the company hereby recognizes as its representative and agent in settling labor disputes and/or grievances which may arise.

(c) In the event the dispute shall not have been satisfactorily settled by any of the above methods, then the matter shall be appealed to three (3) arbitrators, one (1) appointed by the Employers' Joint Labor Relations Committee and (1) appointed by Local Union No. 299 and the two choosing a third disinterested party as the third member and all findings of such board are to be final.

(d) In the event that any employee is discharged for any reason other than dishonesty or intoxication, he shall have a hearing within twenty-four (24) hours. If after the hearing the man is reinstated, he shall be compensated for all time lost. The amount of compensation to be decided by the Arbitration Board.

This Agreement shall become effective this 1st day of

August, A. D., 1940, and continue in full force and effect until the 1st day of July, A. D. 1942.

IN WITNESS WHEREOF the parties hereto have hereunder set their hands and seals the day and date first above written.

COMPANY

J. F. MORRIS CARTAGE CO.,
By J. F. MORRIS

UNION

LOCAL UNION NO. 299,
By: R. J. BENNETT,
J. S. LYLE.

EXHIBIT "D-2"

August 13, 1941

MEMORANDUM

OFFICE OF PRODUCTION MANAGEMENT
SOCIAL SECURITY BUILDING
WASHINGTON, D. C.

Mr. James Hoffa
Local Union 299
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Workers of America
1500 West Fort Street
Detroit, Michigan

Mr. R. B. Godfredson, Chairman
Local Cartage Negotiating Committee
751 - 15th Street
Detroit, Michigan

Re: Greater Detroit Local Cartage Labor Matter.

Gentlemen:

After considerable analysis of the labor controversy in the Greater Detroit area and all matters pertaining there-

to, particularly the ability of employers to meet the Union's demand for increased wages effecting local cartage, this office has come to the conclusion that without disturbing any of the existing contracts between the local union and the operators that both parties, because of the national emergency and particularly because of the importance of the Greater Detroit area in our defense program, agree with me, as representative of the Office of Production Management, work under the following terms during the existence of the emergency. It being specifically understood that as a recommendation to take care of an emergency situation, that should such national emergency terminate and be declared to be at an end by this office, that the terms and conditions contained herein shall automatically terminate and all parties revert to their rights under written agreement of August 1, 1940; provided, however, that in no case shall the terms of this recommended memorandum be effective after December 31, 1942.

Both employers and Local 299 agree with the Office of Production Management that:

1. There shall be no stoppage of work due to the urgent and serious emergency existing.

2. That the operators grant to members of Local 299 a six cent (6c) per hour increase for each and every class of employees described in their agreement now existing between both parties.

3. In order to allow the operators to meet the added burden which they assume because of extreme emergency of national defense, this office recommends that the hours of service be increased four (4) hours per week.

4. That the above conditions being solely for the period of the emergency that an emergency expiration date to the present contract existing between the parties be accepted by both parties, namely, from August 1, 1941, to December 31, 1942, it being specifically understood and agreed that should the emergency period be declared at an end by this office, that these provisions and conditions, as agreed with by our office, be automatically terminated and the rights of

the parties shall revert to the terms of the original agreement.

I am sure that both of you realize the seriousness of our present conditions and will do everything in your power to convince your respective membership that your agreement with our office under this proposal will not only be accepted, but faithfully carried out and performed.

Very truly yours,

GEORGE PLAMBECK.

Accepted by the Union:

JAMES R. HOFFA
Signature.

Accepted by the Employer:

J. F. MORRIS CARTAGE CO.
JAMES F. MORRIS
Signature.

EXHIBIT "D-3"

August 26, 1941

OFFICE OF PRODUCTION MANAGEMENT
SOCIAL SECURITY BUILDING
WASHINGTON, D. C.

Mr. James Hoffa
Local Union 299
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Workers of America
1500 West Fort Street
Detroit, Michigan

Mr. R. B. Godfredson, Chairman
Local Cartage Negotiating Committee
751 - 15th Street
Detroit, Michigan

Gentlemen:

On August 13, 1941, this office made certain recommendations for compromise of settling the request of Local 299

pertaining to local cartage drivers in the Greater Detroit Area. After many conferences and meetings, the driver members of Local 299, at a meeting at Western High School held on August 13, 1941, accepted the recommendations of this office stated in my letter of August 13, except for proposal No. 3 on the second page of my letter. This paragraph in substance was a request by the operators for an increase of four hours per week to be added to their regular time as provided in existing agreements. This office, after listening to the objections of this request, gave the matter further serious consideration and we have arrived at the conclusion that the men have some justification for their objections, although we also feel that the operators should have some relief in this matter of hours.

Therefore, we are recommending that our proposal No. 3 as mentioned heretofore be amended allowing the hours of service to be increased to two hours instead of four to all existing contracts before any operator pays overtime as provided under existing wage agreements. All other provisions contained in our original memorandum having been accepted, we hope that all parties concerned will accept the two hour recommendation and that the entire matter will be amicably and immediately adjusted.

Very truly yours,

GEORGE PLAMBECK.

Accepted by the Union:

JAMES R. HOFFA
Signature.

Accepted by the Employer:

J. F. MORRIS CARTAGE CO.
JAMES F. MORRIS
Signature.

COURT'S CONCLUSIONS OF LAW

(Filed September 26, 1945)

At a Session of Said Court held in the Federal Building at Detroit, Michigan on September 26th, 1945.

PRESENT: Honorable Ernest A. O'Brien, United States District Judge.

This cause having been presented to the Court upon a stipulation of facts and counsel for the respective parties having been heard in oral argument, this Court makes the following conclusions of law:

1. Neither the Defendant nor employees are engaged "in the production of goods for commerce" within the meaning of the Fair Labor Standards Act of 1938.

2. To the extent that Defendant and his employees may be considered to be engaged "in commerce" within the meaning of the Fair Labor Standards Act of 1938, the maximum hour provisions of Section 7 of the Act are rendered inapplicable to such employees by the provisions of Section 13 of the Act in view of the fact that they are either employees employed in a bona fide executive or administrative capacity, i. e.: dispatchers and superintendent of maintenance, within the language of Section 13 (a)(1) or employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935, i.e.: truck drivers and garage employees, within the language of Section 13 (b)(1).

3. Complainant has failed to make out a case for injunctive relief against the Defendant and an Order may be entered dismissing the complaint.

ERNEST A. O'BRIEN,
United States District Judge.

JUDGMENT

(Filed September 26, 1945)

At a Session of Said Court held in the Federal Building at Detroit, Michigan on September 26th, 1945.

PRESENT: Honorable Ernest A. O'Brien, United States District Judge.

Plaintiff having filed his Complaint and the Defendant having appeared by counsel and having filed his Answer, and the cause having come on to be heard upon a written Stipulation of Facts and upon oral argument by counsel for the respective parties hereto and the Court having filed conclusions of law herein

NOW THEREFORE, upon motion of attorneys for Defendant, it is

ORDERED, ADJUDGED AND DECREED that the Plaintiff's Complaint herein may be and is hereby dismissed without costs.

ERNEST A. O'BRIEN,
United States District Judge.

September 26th, 1945.

NOTICE OF APPEAL

(Filed December 6, 1945)

Notice is hereby given that L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, plaintiff in the above-entitled cause, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final judgment entered in this cause on September 26, 1945, denying the injunctive relief prayed for in the plaintiff's bill of complaint.

Dated December 6, 1945.

(s) WILLIAM S. TYSON,
Acting Solicitor.

(s) JETER S. RAY,
Assistant Solicitor.

(s) CHARLES A. REYNARD,
Regional Attorney.

(s) FRANK R. DITTOE,
Attorney
Attorneys for Plaintiff.

Service of a copy of the foregoing notice is acknowledged on behalf of defendant this 6th day of December, 1945.

MATHESON, DIXON & BRADY,
By: (s) GEO. S. DIXON,
Attorney for Defendant.

DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED ON APPEAL

(Filed December 6, 1945)

To the Clerk of said Court:

Please print the following portions of the record in the above-entitled cause for appeal to the United States Circuit Court of Appeals for the Sixth Circuit:

1. All Docket Entries.
2. Complaint.
3. Defendant's Answer.
4. Written Stipulation Of Facts and attached exhibits.
5. Supplement to Stipulation of Facts.
6. Court's Conclusions of Law.
7. Final Judgment of the Court.
8. Notice of Appeal.
9. Designation of Portions of Record to Be Printed On Appeal.
10. Stipulation Re Comparison of Record.
11. Clerk's Certificate.

Dated December 6, 1945.

(s) CHARLES A. REYNARD,
Regional Attorney.

(s) FRANK R. DITTOE,
Attorney,
Attorneys for Appellant.

Service of a copy of the foregoing designation is acknowledged on behalf of Appellee this 6th day of December, 1945.

MATHESON, DIXON & BRADY,
By: (s) GEORGE S. DIXON,
Attorneys for Appellee.

STIPULATION RE COMPARISON OF RECORD

(Filed December 6, 1945)

It is hereby stipulated by and between the attorneys for the respective parties hereto that the Record on Appeal as printed be certified and transmitted by the Clerk of the United States District Court for the Eastern District of Michigan to the United States Circuit Court of Appeals for the Sixth Circuit without comparison.

Dated: December 6, 1945.

(s) CHARLES A. REYNARD,
Regional Attorney.

(s) FRANK R. DITTOE,
Attorney.
Attorneys for Appellant.

MATHESON, DIXON & BRADY,
By: (s) GEORGE S. DIXON,
Attorneys for Appellee.

ORDER EXTENDING TIME FOR FILING RECORD AND DOCKETING APPEAL

(Filed January 9, 1946)

Appellant having filed his notice of appeal and designation of record on appeal to the United States Circuit Court of Appeals for the Sixth Circuit herein on the sixth day of December 1945; and appellant having been unable to complete the preparation of the record on appeal herein and being unable to complete the same within the period of forty days from the date of filing of such notice of appeal; and appellant having moved the Court for an order extending the time within which the record on appeal may be filed and the appeal docketed in said Circuit Court of Appeals until March 1, 1946; and counsel for appellee having agreed to such extension;

It Is Ordered that the time within which the record on appeal may be filed and the appeal docketed in the said Circuit Court of Appeals be and the same hereby is extended to March 1, 1946.

Dated: January 9, 1946.

Ernest A. O'Brien,
United States District Judge.

Charles A. Reynard,
Regional Attorney,

Frank R. Dittoe,
Attorney,
Attorneys for Appellant

Matheson, Dixon & Brady,
By: George S. Dixon,
Attorneys for Appellee.

CLERK'S CERTIFICATE

EASTERN DISTRICT OF MICHIGAN,)
SOUTHERN DIVISION) ss:

I, George M. Read, Clerk of the United States District Court for said District, do hereby certify that the within and foregoing numbered pages contain a full and complete copy of all papers filed and all proceedings in said cause, in accordance with the stipulation of the attorneys for the respective parties as to the contents of the record on appeal and in accordance with the stipulation entered into between the attorneys for the respective parties in said cause, waiving comparison by the Clerk of the record on appeal.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of said Court at Detroit, this ..... day of ....., A. D. 1946.

GEORGE M. READ, *Clerk*,
United States District Court,
Eastern District of Michigan.

By .....
Deputy Clerk.

PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(April 12, 1946—Before: HICKS, ALLEN and MILLER, JJ.)

This cause is argued by Helen Grundstein for Appellant and by George S. Dixon for Appellee and is submitted to the Court.

JUDGMENT

(Entered and Filed May 29, 1946)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be and the same is hereby reversed and the case remanded for further proceedings consistent with the views expressed in the opinion.

OPINION

(Filed May 29, 1946)

Before HICKS, ALLEN and MILLER, Circuit Judges.

MILLER, Circuit Judge. The Administrator of the Wage and Hour Division, United States Department of Labor, appeals from the judgment of the District Court, dismissing the complaint in an action brought by him under § 17 of the Fair Labor Standards Act to enjoin the appellee from violation of §§ 15(a)(1) and 15(a)(2) of the Act [§§ 217, 215(a)(1), 215(a)(2), Title 29 USCA].

The stipulated facts are briefly as follows: The appellee, a common carrier by motor vehicle, is the sole owner and operator of J. F. Morris Cartage Company in Ecorse, Michigan, doing business in and about Detroit, Michigan. He employs approximately 40 truck drivers, 14 mechanics, painters, washers, and repair men in the garage, 3 dispatchers and 3 general office workers. His operations are centralized at his main garage and yard in Ecorse, Michigan, which is used as a dispatch office, general maintenance and repair garage and storage space for equipment when not in active use. Although he is engaged in a general cartage business and is prepared to render such service to the general shipping public, approximately 97% of his business consists of the interplant transportation of unfinished steel in the course of its manufacture and the transportation of finished steel from the mills where it is produced to the plants of manufacturers in Detroit. This involves the transportation of steel from industrial establishments in Detroit to the mills of the Great Lakes Steel Corporation and the Michigan Steel Corporation at Ecorse, Michigan, and the transportation of steel from these mills to the plants of various Detroit automobile and parts manufacturers, as well as the hauling of unfinished steel between plants of the Great Lakes Steel Corporation or the Michigan Steel Corporation or the interplant hauling between the two mills. The steel transported is principally bumper stock, fender stock and other types of steel commonly used in the production of automobiles, trucks, trailers, ma-

chinery, and other goods, a substantial portion of which is sold and shipped in interstate commerce.

Approximately three percent of appellee's business consists of miscellaneous local cartage of a pickup and delivery character, which involves the handling of goods in transit to and from points outside the State of Michigan. Of appellee's total operations in 1941 (the calendar year preceding the filing of the complaint), 96.35 percent (19,062 trips of a total of 19,786 trips) represented interplant transportation. The remaining 3.65 percent were pickup trips, involving interstate transportation. In the average workweek throughout the entire year 1941, 75.6 percent of the drivers were exclusively engaged in interplant trips. The remaining 24.4 percent of the drivers in the average workweek during that year made one or more pickup or boatdock trips, or both. Two employees were exclusively engaged in interplant hauling during the full period of their employment during the year 1941. The "average employee" was exclusively engaged in interplant transportation during 75.6 percent of the workweek in 1941.

Each of the three of defendant's office employees is employed on a weekly salary basis and is compensated at a rate in excess of that required to be paid by § 6 of the Act. None of these three office employees has ever worked in excess of the maximum number of hours described in § 7 of the Act in any workweek.

The superintendent of maintenance, Herbert E. Smith, is paid a straight weekly wage of $60 regardless of number of hours worked. During substantially all of the workweeks since October 24, 1938, the effective date of the Act, he has been employed for a number of hours in excess of the number provided in § 7 of the Act without receiving compensation in excess of his regular weekly salary. In the normal course of his employment he has full authority over all mechanics and laborers with power to hire or discharge such employees and to make determinative representations concerning their employment. He works the same schedule of hours as the other em-

chanics and laborers, and devotes approximately 25% of his time in the performance of routine physical tasks of the same general character as that of the employees working under his direction and supervision.

The other employees of the appellee are employed on the basis of a fixed hourly rate of pay and are paid no additional compensation for hours worked in excess of 40 hours per week, except in the case of truck drivers, who, pursuant to the provisions of their collective bargaining agreement with appellee, receive time and one-half their regular rate of pay for all hours worked in excess of 54 in any workweek. This collective bargaining agreement is a standard Union contract covering all union drivers engaged in general cartage within the Detroit Metropolitan Area, whether employed in purely intrastate operations or in interstate operations.

The appellee denied that his employees were engaged in the production of goods for commerce within the meaning of § 3(j) of the Act; denied violation of the provisions of the Act; and claimed the exemptions provided by §§ 13(a)(1) and 13(b)(1) of the Act. [See §§ 203(j), 213(a)(1), and 213(b)(1), Title 29 USCA]. The District Court held that neither the appellee nor his employees were engaged "in the production of goods for commerce" within the meaning of the Fair Labor Standards Act, and that, in any event, the dispatchers and superintendent of maintenance were employed in a bona fide executive or administrative capacity and were exempt under § 13(a)(1) of the Act, and that the truck drivers and garage employees were employees with respect to whom the Interstate Commerce Commission had power to establish qualifications and maximum hours of service pursuant to the provisions of § 204 of the Motor Carrier Act of 1935 and were exempt under § 13(b)(1) of the Act. Other defenses raised by the answer were not ruled on by the District Court and are not urged by the appellee in this appeal.

The District Judge, in his ruling of September 26, 1945, did not have before him the decision of this Court

in *Griffin Cartage Company* v. *Walling, Administrator*, rendered on February 12, 1946, affirming the judgment of the District Court and approving the District Court's opinion as reported in 62 Fed. Supp. 396. That decision is decisive upon the first issue involved herein, namely, whether or not the employees of the defendant are engaged in the "production of goods for commerce" within the meaning of § 3(j) of the Fair Labor Standards Act. Upon facts essentially similar to those present in this case it was held that the employees were so engaged. The question is sufficiently discussed in the District Court's opinion to make it unnecessary to repeat it here. See also *Armour & Company* v. *Wantock*, 323 U. S. 126; *The Roland Electrical Company* v. *Walling, Administrator*, ... U. S. ....., decided January 28, 1946; *West Kentucky Coal Company* v. *Walling, Administrator*, ... Fed. (2d) ....., ... (C. C. A. 6th), decided February 12, 1946; *Mid-Continent Pipe Line Company* v. *Hargrave*, 129 Fed. (2d) 655 (C. C. A. 10th); *Rockton & Rion R. R. Company* v. *Walling, Administrator*, 146 Fed. (2d) 111 (C. C. A. 4th); *Walling, Administrator* v. *Comet Carriers*, 151 Fed. (2d) 107 (C. C. A. 2nd).

§ 13(b)(1) of the Fair Labor Standards Act provides that the provisions of § 7 of the Act dealing with maximum hours and overtime compensation shall not apply to "any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of § 204 of the Motor Carrier Act, 1935." § 204 of the Motor Carrier Act (§ 304, Title 49, USCA) was construed by the Supreme Court in *United States* v. *American Truck Associations*, 310 U. S. 534, as being "limited to those employees whose activities affect the safety of operation." In *Southland Gasoline Company* v. *Bayley*, 319 U. S. 44, the Supreme Court construed § 13(b)(1) of the Fair Labor Standards Act and held that the word "power" therein meant the existence of the power and not its actual exercise, and that such employees as were subject to regulation under § 204

of the Motor Carrier Act of 1935 were exempt from the provisions of the Fair Labor Standards Act, even though the Interstate Commerce Commission had not actually exercised such power. The jurisdiction of the Commission and the corresponding exemption under the Act extends to truck drivers and to such mechanics who actually perform inspection and repair work on the truck but not to other employees such as painters, washers, and dispatchers. *United States* v. *American Trucking Associations*, supra; *Keeling* v. *Huber and Huber Motor Express*, 57 Fed. Supp. 617, and cases therein referred to.

Where an employee of a motor carrier devotes part of his time to work in interstate commerce affecting the safety of operation and devotes the remainder of his time to work which is not exempt from the provisions of the Fair Labor Standards Act, the question arises whether he has devoted a sufficient part of his time to the work which is exempt to bring him within the exemption provision of the Act. The Administrator of the Wage and Hour Division takes the position that the exemption is applicable to a truck driver only if he spends the greater part of his time during any workweek on exempt activities. On the other hand, some Courts have adopted the rule that the exemption is applicable to any truck driver who devotes a substantial part of his time in any workweek to the driving of trucks in interstate commerce, while other Courts have held that the exemption is applicable to any truck driver who performs any duties during the workweek which substantially affect the safety of operation, although the amount of such duties is comparatively small. Three cases involving these different views are now pending before the Supreme Court. *See Walling* v. *Comet Carriers*, 151 Fed. (2d) 107 (C. C. A. 2nd); *Levinson* v. *Spector Motor Service*, 389 Ill. 466; *Ispass* v. *Puramid Motor Freight Corp.*, 152 Fed. (2d) 619 (C. C. A. 2nd). This Court also has had the same question before it and has adopted the rule that a truck driver engaged in driving trucks both in interstate commerce and in intrastate commerce must

devote a substantial part of his time to the driving of trucks in interstate commerce in order to come within the exemption provision. *Fletcher* v. *Grinnell Bros.*, 150 Fed. (2d) 337,-340 (C. C. A. 6th); *West Kentucky Coal Company* v. *Walling*, supra (C. C. A. 6th). At the present time the question is accordingly not an open one in this Circuit. However, the rule still leaves open the question of what constitutes a substantial part of the time of the employee in question. It appears unnecessary to attempt to answer that question definitely in this case, as the stipulated facts fail to show more than a very small proportion of time devoted to interstate transportation. The burden is on the employer to bring himself within the exemption. *Fletcher* v. *Grinnell Bros.*, supra. The appellee has failed to meet that burden in this case. *West Kentucky Coal Company* v. *Walling*, supra.

§ 13(a)(1) of the Act exempts from the wage and hour provisions "any employee employed in a bona fide executive (or) administrative . . . capacity . . . (as such terms are defined and delimited by regulations of the Administrator)." Pursuant to this authority the Administrator has issued regulations defining and delimiting such terms. Both the regulation defining "Executive" (§ 541-1) and the one defining "Administrative" (§ 541-2) require the existence of certain facts—in the conjunctive rather than the disjunctive. This includes for the "executive" that he be "compensated for his services on a salary basis at not less than $30.00 per week," and that his "hours of work of the same nature as that performed by nonexempt employees do not exceed 20 percent of the number of hours worked in the workweek by the nonexempt employees under his direction." It includes for one employed in an "administrative capacity" that he be "compensated for his services on a salary or fee basis at a rate of not less than $200 per month," and that his work be non-manual in nature and require the exercise of discretion or independent judgment. The validity and binding effect of these regulations are well established.

Sun Publishing Company v. *Walling*, 140 Fed. (2d) 445 (C. C. A. 6th, cert. denied, 322 U. S. 728; *Walling* v. *Yeakley*, 140 Fed. (2d) 830 (C. C. A. 10th); *Fanelli* v. *United States Gypsum Company*, 141 Fed. (2d) 216 (C. C. A. 2nd). It is also well settled that in order to bring an employee within the classification the employer must show that all of the enumerated qualifications exist. *Schmidt* v. *Emigrant Industrial Sav. Bank*, 148 Fed. (2d) 294 (C. C. A. 2nd); *Smith* v. *Porter*, 143 Fed. (2d) 292 (C. C. A. 8th); *Lawley and Son Corp.* v. *South*, 140 Fed. (2d) 439 (C. C. A. 1st). The stipulated facts show that the dispatchers are not employed on a salary basis, one of the essential requirements for both the executive and one employed in an administrative capacity. See *Benedict* v. *United States*, 176 U. S. 357. They also show that the superintendent of maintenance works the same schedule of hours as the other mechanics and devotes approximately 25 percent of his time to work of the same general character as that of employees working under his direction and supervision. Accordingly, he does not qualify as an executive. The physical and manual character of much of his work prevents his classification as one employed in an administrative capacity. See *Walling, Administrator* v. *The General Industries Co.*, ... Fed. (2d) ....., decided by this Court on May 28th, 1946.

The judgment of the District Court is reversed and the case remanded for further proceedings consistent with the views expressed herein.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *L. Metcalfe Walling, Admr.* v. *James F. Morris*, No. 10,194, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 7th day of August, A. D. 1946.

J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 7, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the second question presented by the petition for the writ and the case is transferred to the summary docket. The Interstate Commerce Commission is invited to file a brief *amicus curiae* if so advised.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.